IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

Bail Appl..No. 3903 of 2007(S)

CRIME NO.211/05 OF NOORANADU POLICE STATION.

PETITIONER/1ST ACCUSED

SUNILKUMAR,
'SANGEETHA', KANNAMANGALAM NORTH,
KANNAMANGALAM VILLAGE, CHETTIKULANGARA,
MAVELIKKARA.

BY ADV. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SMT.KAVITHA GANGADHARAN

RESPONDENTS: STATE & COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
NOORANADU POLICE STATION.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 28/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A.NO. 3903 OF 2007

Dated this the 28th day of June, 2007

ORDER

Application for anticipatory bail. The petitioner's wife had filed a private complaint which was referred to the police. Investigation was conducted. Final report is laid under Sec.498A of the IPC. The petitioner did not appear before the learned Magistrate. Consequently, a warrant of arrest has been issued against the petitioner. According to the petitioner, he is innocent. No notice or summons was received from the court by him who is employed abroad. On coming to know of the warrant of arrest issued against him, the petitioner wants to surrender before the learned Magistrate. He further submits that the matter has been settled between the parties and appropriate steps shall be taken to get the proceedings quashed. It is prayed that directions under Sec.438 and/or

482 of the Cr.P.C. may be issued in favour of the petitioner.

2. After the decision in **Bharat Chaudhary and another v. State of Bihar** (AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

4. In the result, this application is dismissed; but with the observation that if the petitioner surrenders before the learned

Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself, unless compelling and exceptional reasons are there.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge